IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6105 OF 2007

Agricultural Produce Market Committee .. Petitioner

V/s

The State of Maharashtra & Ors. .. Respondents

Mr.Girish S. Godbole for the petitioner.

Mr.A.A. Kumbhakoni, Associate Advocate General with Mr.A.H. Palekar, A.G.P. for respondents no.1 to 8.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 22ND AUGUST 2007

ORAL JUDGMENT: (Per D.G. Karnik, J.)

1. Heard the counsel for the petitioner and the Associate Advocate General for the respondents no.1 to 8.

2. By this petition, the petitioner challenges the order dated 14th August 2007 passed by the District Deputy Registrar of Cooperative Societies, exercising the powers of the State Government, bifurcating the Akkalkot Agricultural Produce Market Committee into two market committees, namely Akkalkot Agricultural Produce

Market Committee (for short "Akkalkot Committee") and Dudhani Agricultural Produce Market Committee (for short "Dudhani Committee").

3. Mr.Godbole for the petitioner submitted that the impugned order of bifurcation was bad on four counts. He firstly submitted that under section 44 of the Maharashtra Agricultural Produce Marketting (Development and Regulation) Act, 1963 (for short "the Act"), a market committee cannot be divided into two or more market committees unless the financial viability of the new market committees was considered. He submitted that in the present case on account of bifurcation, at least one market committee viz. Akkalkot Committee would not be financially viable and this aspect has not been considered. He secondly submitted that there has been no effective consultation of the Marketting Board which is mandatory before passing of any order under section 44 of the Act. He thirdly submitted that the decision of allocation of different villages to the newly created market committees is unscientific and unreasonable. The villages which are near headquarters of the Akkalkot Committee have been allotted in the area of the Dudhani Committee without any scientific basis and, therefore, the decision is illogical and unreasonable. Lastly, the counsel submitted that the order of appointment of

Administrators in respect of both the market committees was illegal and contrary to law.

4. As regards the first contention about non-consideration of the financial viability, we notice that the District Deputy Registrar has considered the aspect of financial viability of both the market committees. In particular, in paragraphs 3 and 10 of the order, he has considered the financial viability of the new market committees and has recorded a finding of fact that both the market committees formed by bifurcation would be financially viable. It is seen that the income from the cess of the newly created Akkalkot Committee would be about 45% and the income of Dudhani Committee would be 55% of the total income of the original Akkalkot Agricultural Produce Market Committee. The expenses of the erstwhile committee would be divided on account of division of employees. The petitioner has not produced on record any material to show that either of the two new market committees would be financially unviable. In ground (l) of the petition, there is a vague allegation regarding new Akkalkot Committee being rendered financially unviable. However, no data has been furnished in the petition to show that the income of any of the new market committees would be so low and/or the expenses would be so high as

to make them financially unviable.

5. As regards the consultation of the State Marketting Board, it is admitted that the State Marketting Board has been consulted and the Board by its resolution No.5 dated 8th August 2007 has granted its approval for the bifurcation of the erstwhile Akkalkot Agricultural Produce Market Committee. Mr.Godbole, however, submitted that the State Marketting Board was not validly constituted and invited our attention to section 39(b) of the Act, which contemplates appointment of official as well as non-official persons as its members. He submitted that while ex-officio members were appointed, six non-official/persons, who were required to be notified under clause (vii) of section 39(b), were not notified and, therefore, there were six vacancies in the office of the State Marketting Board. In our opinion, any vacancy in the office of members of the State Marketting Board could not affect the consultation made with the Marketting Board. To hold otherwise would be that even if there is a single vacancy in the composition of the State Marketting Board, the consultation with the Marketting Board would be invalid. If the argument of Mr.Godbole is accepted, the entire working of the State Marketting Board would come to a standstill. Besides, there is no provision in

the Act which says that the consultation of the Marketting Board would not be effective unless all the posts of all the members of the State Marketting Board are filled up. Therefore, the contention that there has not been effective consultation with the State Marketting Board has to be rejected.

6. As regards the allocation of villages to the two newly created committees, it must be stated that bifurcating a market committee into two or more market committees and allocation of villages to them is essentially an administrative decision. No Wednesbury unreasonableness in the said decision of bifurcation and allocation of villages was shown to us. In the circumstances, we cannot go into the question of correctness or otherwise of the administrative decision of allocation of villages to the newly created market committees. Mr.Godbole invited our attention to ground (m) of the petition and the chart of the villages allotted to show that the allocation of villages to the two bifurcated market committees has been made unreasonably without proper regard to the distance between the village and the market yards. In our view, the distance, though one of the criterias cannot be the sole criteria, means ease and facilities of commenting the distance is also required to be taken into

consideration. As already stated, we cannot go into the correctness of the administrative decision as no Wednesbury unreasonableness is shown nor is it shown to us that the decision making process was in any way erroneous.

7. Lastly, the counsel submitted that there was no power to appoint Administrators in respect of the two newly created market committees as the term of original Akkalkot Market Committee was not expired. He invited our attention to the order dated 25th June 2007 passed by a Division Bench in Writ Petition No.7939 of 2006 with Writ Petition No.4694 of 2007, to which one of us (Mhase J.) was a party. In para 6 of the said decision, the Division Bench had directed that the term of the board of directors of the original Akkalkot Agricultural Produce Market Committee shall be extended for a period of 8 weeks from 30th June 2007. He submitted that the period of 8 weeks would expire on 25th August 2007. Therefore, the term of the office of the existing market committee was extended up to 25th August 2007 and the Administrator could not have been appointed before the expiry of the said term. The object of the said order was to enable the existing committee members of the original Akkalkot Agricultural Produce Market Committee to participate (including to object) in the process of

bifurcation as otherwise they would not have been able to do so as the term of the original market committee was to expire on 30th June 2007. The period was extended to enable them to participate in the proceedings of bifurcation and, in our opinion, that does not create a right in the committee members of the erstwhile market committee to continue to be the members of the market committee even after it had ceased to exist by reason of its division into two new market committees. Section 13(2) of the Act specifically provides that when a market committee is constituted for the first time, the chairman, vice chairman and the members shall be nominated by the State Government. In our view, till the time the chairman, vice chairman and the members of a newly created market committee are nominated, an Administrator can be appointed. In the present case, the original market committee - Akkalkot Agricultural Produce Market Committee ceased to exist by reason of its bifurcation and two new market committees came into existence. Merely because one of the new market committees bears identical name, namely Akkalkot Agricultural Produce Market Committee, it does not mean that the original market committee continues to exist. The original market committee has been bifurcated and two new market committees came into existence, namely Akkalkot Agricultural Produce Market Committee and

Dudhani Agricultural Produce Market Committee. Therefore, the State Government has rightly appointed Administrators pending appointment of the chairman, vice chairman and the members of the managing committee of the newly constituted market committees.

9. Mr.Kumbhakoni, Associate Advocate General, submitted that after the notification of bifurcation, charge has been taken by the respective Administrators of the newly created market committees. Mr.Godbole does not admit this. As we are dismissing the petition on merits, we need not consider this aspect.

10. For all the aforesaid reasons, the petition is rejected summarily.

(D.G. KARNIK, J.) (S.B. MHASE, J.)